

civil rights protection & advocacy system for montana

disability **rights** montana
formerly Montana Advocacy Program

January 22, 2009

Rep. Elsie Arntzen, Chair
House Local Government Committee

RE: HB 191, Regulating Pit Bills

Dear Madam Chair and Members of the Committee,

We appear as informational witnesses to advise the committee about how this bill may be amended in order to comply with the Americans With Disabilities Act.

Title II of the Americans With Disabilities Act requires public entities to provide services, programs and benefits to people with disabilities without discrimination. Americans with Disabilities Act of 1990, § 2 et seq; 42 U.S.C.A. § 2101 et seq; 28 C.F.R. § 35.130 (a). The ADA mandates that public entities make "reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. 35.130 (b) (7).

The Ninth Circuit Court of Appeals has found that his affirmative requirement applies to state policies and procedures that infringe upon persons with disabilities through a limitation on the use of service animals. *Crowder v. Kitagawa*, 81 F 3d 1480 (1996). The Court found that Title II required a modification of Hawaii's animal quarantine policy to allow an exception for the use of service animals by people with disabilities who travel to Hawaii.

Although guide dogs for the blind are the best known use of animals by people with disabilities, dogs and other animals are increasingly used to support people with mental illness and seizure disorders as well. The ADA protects the use of service animals by people who have a qualifying disability and who need the animal in order to participate in community life.

To be classified as a service animal under the Code of Federal Regulations for the ADA, the animal must be individually trained to work for the benefit of an individual with a disability. I *Bronk v. Ineichen*, 54 F. 3d 425 (7th Cir. 1995); *Green v. Housing Authority of Clackamas County*, 994 F. Supp. 1253 (Or. 1998).

Therefore, we request that HB 191 be amended at page 1, line 21, after "(3) *The prohibition in this section does not apply to a person who,*" by inserting the following exception:

(d) has a disability and uses a pit bill as a reasonable accommodation pursuant to the Americans With Disabilities Act.

Thank you very much for your consideration of this request.

Yours truly,

A handwritten signature in cursive script, reading "Anita Roessmann".

Anita Roessmann
Staff Attorney